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REPORTS

NOTES OF THE WEEK

Statutory Instruments

The case of *MacFisheries* (*Wholesale and Retail*), *Ltd.* v. *Coventry Corporation* [1957] 3 All E.R. 299 to which A.L.P. made brief reference in his article at p. 713, *ante*, was interesting for two reasons besides the point of law about contamination and the public health. The offence alleged was against Regulations made under s. 13 of the Food and Drugs Act, 1955, and in the course of his judgment the Lord Chief Justice said that in order to interpret the regulations it was necessary and desirable to have regard to what the statute said, and to keep the words of the statute in mind.

Generally, as is stated in the editorial note in the All England report, the proper mode of construing subordinate legislation is to apply the same interpretation to terms used in it as applied to the like terms in the statute under which the subordinate legislation is made. This principle accords with the case of *Blashill* v. *Chambers* (1884) 14 Q.B.D. 485.

There is also a reference in the judgment of the Lord Chief Justice to the great care and attention given to the case by the justices. Lord Goddard said that they had stated the case very fully in a way which enabled the Divisional Court to get a clear view of the reasons which moved the justices to decide as they did. In fact that decision was reversed by the Divisional Court, but the justices need not feel discouraged on that account in view of what they may reasonably interpret as a commendation of their approach to their work.

Offensive Weapons

In spite of the provisions of the Prevention of Crime Act, 1953, there are still too many instances of young people carrying coshes and other lethal weapons. In most cases there is obviously no lawful excuse for even possessing them, let alone carrying them in the streets, and often they are produced in fights between rival gangs of youths.

In the *Newcastle Journal* a case is reported in which an 18 year old youth was sent to borstal training on a charge that he had used a flick type of knife on a member of a rival gang. Streatfeild, J., who dealt with the case at Durham Assizes, said it was time it was made an offence to sell such things.

In another case an 18 year old girl, charged at Birkenhead magistrates' court with being in possession of an offensive weapon without reasonable excuse was put on probation, and the court exercised its power to order the weapon to be forfeited. According to the *Liverpool Daily Post*, this girl and another aged 16 had intimidated children. The elder girl was found in possession of a strongly made steel type of flick cosh with a loop to go over the wrist. The younger girl carried a knife. Referring to the cosh, the clerk said it was surprising that such things were allowed to be manufactured.

Sometimes an article capable of lawful and proper use is used as an offensive weapon, and then there is no reason to blame the maker or vendor. It is otherwise where the weapon is manifestly an offensive weapon and nothing else, and of such a nature that it is difficult to imagine any proper purpose it could serve. Then it is discreditable to manufacture or to trade in such an article, even though it may not be prohibited by law. Perhaps now that a Judge of the High Court has commented on the matter the possibility of legislation will be considered.

Highly Technical

It is always unsatisfactory when a case has to be decided upon some narrow technical point when the merits of the case point to an opposite decision. Fortunately, the tendency has been for some time past to make criminal law less technical than it used to be.

The point of the appeal in the case of *R.* v. *Kiley* (*The Times*, October 29) was unusual. The appellant had appealed unsuccessfully against his conviction in 1953, and the present appeal was referred to the Court of Criminal Appeal by the Home Secretary under s. 19 (*a*) of the Criminal Appeal Act,

1907. The case turned upon the "highly technical" requirement in the Central Criminal Court Act, 1834, that two at least of the persons named in the commission as Judges of the court must be present during any sitting. All the aldermen of the city of London are included in the commission, and if it happens that only one court is sitting an alderman remains in the precincts of the court if no other commissioner is there. In *Kiley's* case it happened that through a misunderstanding the alderman, thinking the Commissioner had risen for the day when in fact he had adjourned for a very short time, left the building. The Commissioner continued the proceedings after the short adjournment, but on being informed of the position some 20 minutes later discontinued the proceedings until the next day, when they were resumed under proper conditions. No evidence for the Crown had been given during the period when the Court was, as contended, sitting irregularly, and the cross-examination was repeated next day. The appellant contended, however, that this made the whole of his trial illegal.

In the course of delivering judgment, dismissing the appeal, the Lord Chief Justice said that without deciding the question whether the Court at the Central Criminal Court was properly constituted during the period after the adjournment, it would be assumed for the purposes of the appeal that it was not. The result was simply that certain inadmissible evidence had been given. The Court was of the opinion that this was essentially a case to which the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, should be applied, and the appeal would be dismissed, on the ground that there had been no miscarriage of justice.

The Simple Remedy

Lord Goddard said that this point would not arise again because he had spoken to the Lord Chancellor last year about the inconvenience of the necessity of having an alderman present whenever the Court was sitting. The reason why the Act of 1834 required a quorum of two was that it followed the precedent of the old commissions of Assize. The commission at the Old Bailey now included the clerk of the court and his associates in the commission. This satisfied the highly technical requirement of the Act that there should always be two justices present.

It would have seemed most unsatisfactory in the eyes of the public if the result of this appeal had been otherwise. The presence of an alderman in the building, but not in the court-room, would seem to the public to have no possible effect on the validity of the trial. The Lord Mayor of London and the aldermen perform valuable judicial service in the magistrates' courts, but though in theory they might try cases at the Central Criminal Court it is well established that they do not and their duties in that court may perhaps be described as ceremonial.

We believe that at Assizes the Clerk of Assize is included in the commission, and it is satisfactory to learn that as the result of the representations made by the Lord Chief Justice the same practice is now followed in relation to the Central Criminal Court.

Hands in Pockets

It is beyond dispute that a witness is of most assistance to the court when he is not ill at ease and nervous. For many people appearance in court is something of an ordeal, and they may fidget nervously or stand awkwardly, not knowing what to do with their hands. This accounts for the fact that often a man puts his hands in his pockets. If he is rebuked he is likely to become still more flustered, and that does not help him or the court.

At the Birmingham Assizes, when counsel suggested that a witness should take his hands out of his pockets, Stable, J., commented that the witness need not, people felt more comfortable that way, and counsel were always doing it.

When counsel or solicitor addresses the court with hands in pockets it is in no spirit of disrespect, and it would be unusual for him to be reproved. As the learned Judge observed, it is constantly done. A witness may surely be shown the same indulgence. Of course it is possible for a prisoner or a witness to put his hands in his pockets ostentatiously and to adopt an attitude which is manifestly defiant and disrespectful. Then there is good ground for rebuke, but it does not happen often.

How unconscious may be the habit was amusingly illustrated at a recent meeting of magistrates when this point was being discussed. A magistrate stated that he should always reprove a witness who gave evidence with his hands in his pockets. The chairman called attention to the fact that the speaker had his hands in his pockets while addressing the meeting. One is tempted to ask whether the speaker expected more signs of respect from a witness than he accorded to his fellow-magistrates. The plain truth is that this sort of thing is mostly unconscious and not worthy of reproof.

Drunken Driver Causes £3,000 Damage

Section 17 (2) of the Criminal Justice Act, 1948, enacts that no court shall impose imprisonment on a person under 21 years of age unless the court is of opinion that no other method of dealing with him is appropriate. It was only this provision which saved a young man of 20 from being sent to prison when he pleaded guilty to driving a lorry in a manner dangerous to the public, driving under the influence of drink, taking and driving the lorry away without the owner's consent and driving with no licence and no insurance. He was fined a total of £46 and was allowed three months in which to pay.

The case is reported in the *Liverpool Daily Post* of October 26. The lorry was 45 *ft.* long, with its trailer, and was loaded with steel girders. The total weight was 15 to 20 *tons*. The defendant, who was said by the defending advocate to have been drinking all the evening and to have finished by drinking vodka, was seen in the driver's cab of the vehicle at about midnight and he drove off in it. In his journey he dragged a car for 60 *yds.*, he flattened a lamp post and crashed into a hotel to which he did damage to the extent of £500. The lorry was a total wreck, and its cost was about £2,700. The total damage caused was therefore well in excess of £3,000. The defendant was a single man and his Army record was said to be good. He had an unsettled upbringing and a bad family background. In 1951, when he was only 14 or 15, he was placed on probation for two years for stealing.

The chairman said, after the bench had retired to consider their decision, that they had thought of sending him to prison, and that had he been 21 or over they would certainly have done so. Short of sending him to prison the bench could have considered, and probably did, committing him to quarter sessions for borstal, but this appears to have been an isolated offence, appalling as the consequences were, and it is likely that the requirements of s. 28 (1) of the Magistrates' Courts Act, 1952, were thought not to be satisfied in his case. The court were, therefore, in a difficult position. The fines imposed compare strangely with the damage which the offences caused. But there was, of course, no possibility of their doing otherwise, and it can only be

hoped that during the next three months while he is paying the fines this young man will reflect constantly on his narrow escape from prison, and that he will have learned his lesson.

Cameras on French Police Cars

Local Government Abroad, published in October, 1957, by the British Section of the International Union of Local Authorities, contains amongst other items, a report about the use in French police cars of special cameras which are used to obtain evidence of road offences. It seems that each car which is so equipped has two cameras, one with an ordinary lens and one with a long-distance lens, and that there is a special flashlight which can be used to enable photographs to be taken at night. By this means index numbers can be recorded, under any lighting conditions, up to a distance of 45 metres, nearly 50 *yds*. There is another attachment which registers with each picture taken the state of the traffic, the speed of the vehicles and the time, within one second. It is said that a halo on the photograph is produced when the police camera is faced by blinding headlights.

The report claims that the accuracy of the records thus produced is so well proved that it is probable that all French police cars will be equipped in this way, and it is stated that "such evidence will be accepted as conclusive in courts of law, despite their extreme reluctance to accept evidence based on mechanical devices."

It seems possible that a device for which so much is claimed will be bound to attract the interest and attention of police authorities in this country. We have read, and have referred in this journal, to reports of the use of cameras by police, but the system in use in France seems to be a more elaborate one than any we have heard of before. With radar speed checks and such cameras in use offending motorists would be likely to have a very uncomfortable time, a matter of which no one could properly complain.

Car Headlamps

The Essex County Constabulary road safety office accident bulletin for October, 1957, makes a special feature of headlights and the importance of their being correctly set so that they give the driver using them the best possible result without dazzling oncoming drivers. It is said that in Essex in a recent test a "beamsetter" was used to determine whether the headlights of a number of cars were correctly aimed. Of 181 which were tested 108 were found to be faulty.

All motorists who drive at night know the danger of blinding headlights. The Road Vehicles Lighting Regulations, 1954, reg. 10, prohibit the use on vehicles, other than cycles, of lamps which are not so constructed, fitted and maintained, that the beam of light from them complies with one or other of the four requirements of reg. 10 (2), and the object of these is to ensure that, if properly used, such lamps shall not dazzle other road users. But although there is a failure to comply with this regulation if a lamp is not so constructed, fitted or maintained, there is no requirement that the lamp shall be so used that advantage is taken of its being properly constructed, fitted and maintained ; and inconsiderate drivers who carelessly or (even worse) deliberately dazzle others by not dipping their lights when they should are not by reason of this conduct guilty of an offence against the regulations. It might well be argued, however, that they are guilty of driving without reasonable consideration for other persons using the road. The difficulty would be to identify the offending drivers in the circumstances in which such "offences" occur. They happen only at night, and the cars concerned are usually travelling at a fairly fast speed. By the time the dazzled driver has recovered from the effect of being dazzled the offender's car is so far past that it is impossible to get the number. This same difficulty would have to be met if "failure to dip" were in itself an offence. Quite apart from cases of inconsiderate or deliberate dazzling, however, the Essex figures we have quoted suggest that many drivers are failing properly to maintain their lamps, and this should not be so difficult to deal with.

State Mental Institutions

Disagreement with certain of the recommendations of the Royal Commission was expressed at the recent annual meeting of the State institutions' section of the Prison Officers' Association by their president, Mr. J. Swainston. He described as "entirely wrong" (we quote from the *Manchester Guardian*) the proposal to transfer unconvicted persons from mental hospitals to Broadmoor. Some of the witnesses before the Royal Commission suggested that this should be made possible if they were homicidal and needed close control and supervision. The Royal Commission thought it would be reasonable to do so if the mental conditions or behaviour of the patient made this desirable just as patients can be transferred from Broadmoor to other hospitals and between Rampton and Moss Side hospitals and other mental deficiency hospitals.

Before 1948 Rampton and Moss Side Hospitals for defectives of violent or dangerous propensities were owned and managed by the Board of Control. Broadmoor was owned by the Home Secretary and managed on his behalf by a council of supervision. In 1948 and 1949 the ownership of these hospitals was transferred to the Minister of Health. But, unlike other hospitals, their management is not in the hands of hospital management committees. They are managed on behalf of the Minister by the Board of Control. The Royal Commission recommended that the Minister of Health should consider whether it would not be suitable for these hospitals to be brought within the normal national health service administrative system. This idea was resisted by Mr. Swainston, who said all the state institutions should be under the Home Office, "whose personnel contains men who knew what is required in order to achieve maximum security." The president's views were supported by a resolution passed at the meeting. It was suggested, further, that the institutions should be brought within the scope of the prison medical services or be managed by the Home Office. The general secretary said that since the institutions had been under the control of the Minister of Health there had been constant difficulty and trouble, both in inmate relationship and staff relationship. He said "the quicker we get back to the control of the Home Office the happier all of us will be." One argument used was that the National Health Service administration consisted of local politicians. Whilst we agree that very careful consideration must be given to this matter, particularly in so far as security measures are concerned, before any such transfer is given legislative approval and that there is much in the arguments raised in opposition it is hardly fair to describe members of hospital management committees in this way. In fact many of the members of both the committees and regional hospital boards are doctors and others are appointed for their personal suitability or as representing local authorities. Very few are appointed on purely political grounds.

LARCENY BY A TRICK AND FALSE PRETENCES

MISTAKEN IDENTITY

[CONTRIBUTED]

The difference between larceny by a trick and false pretences is often difficult to ascertain. A reference to the text books confirms this. At p. 554 of the 33rd edn. of *Archbold's Criminal Pleading* is the statement that "the offence of larceny by a trick in some cases so nearly resembles that of obtaining by false pretences as to create difficulty in distinguishing them upon principle."

Kenny's Outlines of Criminal Law, after referring to larceny by a trick as a puzzling offence "even to experts," says: "It is often a matter of extreme difficulty to determine whether the offence committed is larceny by a trick or false pretences. The difficulty is made greater by reason of the fact that many cases decided in criminal courts to be larceny by a trick would more logically have been held to be cases of obtaining by false pretences."

The differences between the two offences was stated by A. L. Smith, J., in *R.* v. *Russett* (1892) 56 J.P. 743, to be this: ". . . if the possession only of money or goods is given, and the property is not intended to pass, that may be larceny by a trick; the reason being that there is a taking of the chattel by the thief against the will of the owner, but if possession is given and it is intended by the owner that the property shall also pass, that is not larceny by a trick but may be false pretences, because in that case there is no taking, but a handing over of the chattel by the owner. This case, therefore, comes to be one of fact, and we have to see whether there was evidence that . . . the prosecutor intended to pass to the prisoner the property . . . as well as give possession."

Two significant points from that extract are that the intent of the owner is looked for, and that the question is one of *fact*. The two points emphasize the difficulty. The distinction between the two offences is one based on fact: the intention of the owner.

The intention of the owner almost invariably has to be ascertained from the surrounding facts and to do this is, according to *Kenny*, sometimes so difficult as to have given rise to decisions which cannot be reconciled with any logical rules as to consent. There appear, however, to be two ways in which the absence of intention on the part of the owner to pass the property can be shown. First, by proof of a mistake as to the identity to whom possession is given, and secondly, by proof of the incompleteness of the transaction.

If cases are considered in the light of these distinctions, it is suggested that a working guide to cases falling on the borderline of the two offences will be obtained. It must be emphasized, however, that the cases are only classified as falling under one or the other heading in relation to the facts from which the owner's consent (or lack of it) can be ascertained.

Cases which can be classed as arising upon mistaken identity will be considered first.

"If one party at the time of purporting to enter into a contract is mistaken as to the identity of the other party, that mistake negatives his consent if the consideration of the person with whom he is willing to contract enters as an element into the contract which he is willing to make." (*Sutton and Shannon on Contract*, 2nd edn. at p. 127.)

This statement of the civil law is applicable to transactions resulting in criminal proceedings for larceny by a trick. The point at issue in cases of mistaken identity is whether the mistake was a vital element in the transaction. If, for example, the owner of property were prepared to treat with all-comers, then identity would not normally be a vital element. But if he were only prepared to deal with a certain person, and another person represented himself to be that person, then identity would be vital.

There have been a number of cases in which this question has been discussed and decided. Cases in which identity has been held to be vital are *Cundy* v. *Lindsay* (1873) 3 App. Cas. 459, *Said* v. *Butt* [1920] 3 K.B. 497, and *Sowler* v. *Potter and Others* [1939] 4 All E.R. 478. Cases in which the transaction has been held to be unaffected by a misrepresentation of identity are *Phillips* v. *Brooks* [1919] 2 K.B. 243 and *Dennant* v. *Skinner* [1948] 2 All E.R. 29.

In *Cundy* v. *Lindsay* a firm of linen manufacturers (Lindsay & Co.) received a letter requesting a supply of goods from a fraudulent person named Blenkarn signed so that the signature looked like "Blenkiron and Co." Lindsay & Co., knowing of the existence of Blenkiron & Co., but not knowing their address, sent the goods, addressed to Blenkiron & Co., to the address given by Blenkarn. The goods were then sold to Messrs. Cundy, and Lindsay & Co. sued Messrs. Cundy in conversion for the value of the goods, contending that they never intended to part with the property to Blenkarn and that they were under a mistake in contracting with him. This view was upheld by the House of Lords.

In *Said* v. *Butt*, Said was a man who knew he would not be given a ticket for a performance of a play at a certain theatre and therefore arranged for a friend to apply for a ticket for him. On the night of the performance, however, Said was recognized and refused admission to the theatre. He sued the manager, Butt, for damages for procuring the company owning the theatre to break its contract with him. It was held that there was no contract because the company would not have entered into a contract with Said had his identity been disclosed.

In *Sowler* v. *Potter* a woman named Robinson was on May 12, 1938, convicted of permitting disorderly conduct in a tea-room. On July 4 of the same year she changed her name to Potter by deed-poll. On June 16, however, she had offered to take the lease of certain premises as a tea-room under the name of Potter. It being subsequently discovered that the defendant was, in fact, Robinson, the landlord sought a declaration that the lease was void. It was held that consideration as to the identity of the person with whom the contract was made was vital and that there had been such a mistake as to render the contract void.

Before these cases are considered in more detail it would be convenient if the facts of the other cases referred to were mentioned. It will then be possible for the decisions to be compared and distinguished.

In *Phillips* v. *Brooks* a man whose name was North entered a jeweller's shop. He selected certain jewels which the jeweller was prepared to sell to him individually as a casual

customer. North then drew a cheque in the name of Sir George Bullough, whom he represented himself to be, and was allowed to take one of the jewels away in exchange for the cheque. It was held that the property in the jewel had been passed as, although the jeweller believed North to be Sir George Bullough, he in fact intended to sell to the person, whoever he was, who came into the shop.

In *Dennant* v. *Skinner* the plaintiff, an auctioneer, knocked down a van to the highest bidder and inquired his name. The bidder gave his name as King and falsely stated he was the son of a proprietor of a well-known and reputable firm of dealers. The plaintiff then knocked down five more vehicles to King. Afterwards King again made his false representations as to identity and, by virtue of them and his production of a cheque book containing counterfoils showing (apparently) payments of large sums to other auctioneers, persuaded the plaintiff to part with possession of the cars on payment by cheque although the plaintiff did not normally surrender possession in exchange for a cheque to an unknown customer. It was held that as there was no mistake as to identity at the time of sale (the fall of the hammer) the passing of the property was not vitiated.

It has been said that the case of *Phillips* v. *Brooks* supports the proposition that where a transaction takes place between parties face to face it can never be said that there is a mistake of identity sufficient to vitiate consent to the passing of the property in a thing. The case of *Cundy* v. *Lindsay* is referred to in support of this proposition on the ground that the transaction there was by correspondence and that the firm of Lindsay & Co. could therefore only deal with the firm with whom they thought they were dealing and not with the individual with whom they were actually dealing.

Such a view misinterprets the principle behind both decisions which does not depend upon the presence or absence of the fraudulent party but upon the effect his misrepresentation had upon the mind of the owner of the goods. In *Phillips* v. *Brooks* the misrepresentation as to identity took place after the jeweller had accepted the man North as a customer and only affected his decision to surrender possession of the jewel. The Judge found *as a fact,* that the jeweller intended to sell to the person, whoever he was, who came into the shop and, as has been shown, it is the intention of the owner which is the material factor.

Exactly the same considerations applied in *Dennant* v. *Skinner.* In his judgment in that case Hallett, J., said:

"At an auction sale . . . the lot is knocked down to the highest bidder, whoever the highest bidder may happen to be. When it comes to removing the lot without paying cash for it, other questions arise, but so far as the contract is concerned and the passing of the property in the object sold, ordinarily the identity of the buyer does not enter into the question any more than it ordinarily does on the sale of an article in a retail shop. . . . the shopkeeper is not concerned with the identity of the customer in deciding whether to sell the goods to him, although he is concerned whether, having affected the sale, he should give the purchaser credit."

Comparing these cases (*Cundy* v. *Lindsay, Dennant* v. *Skinner,* and *Phillips* v. *Brooks*) with *Said* v. *Butt* and *Sowler* v. *Potter,* it will be seen that in the latter two cases the owners of the theatre (through their manager), and the landlord, were prepared to treat with the public at large (albeit subject to certain conditions) but not with the particular person involved in each case. In other words the theatre manager was not prepared to sell a ticket to Said and the landlord was not prepared to lease property to Potter. Said obtained a ticket and Potter the lease, by what in each case was a misrepresentation of their respective identities. The theatre manager thought he was contracting with Said's friend as a member of the public other than Said. The landlord thought she was contracting with a person other than Potter. In each case the misrepresentation was a vital element in the transaction.

When the question of the passing of the property in goods or money in larceny by a trick is considered, these two cases give clear examples of circumstances in which, through misrepresentation as to identity, the owner does not intend to pass the property to the person who has obtained it. In the case of *Cundy* v. *Lindsay,* the other case in which the property in goods was held not to pass, the same principle is involved.

It might be suggested that the distinction between these cases and *Phillips* v. *Brooks* and *Dennant* v. *Skinner* is that in the latter two cases the misrepresentation took place *after* the owner had agreed to sell. This implies that if the misrepresentation had been made before the sale the property in the goods would not have passed. The effect of this implication is that if the owner is mistaken as to the identity of the party with whom he is transacting then his consent is negatived and the property does not pass. But this is not the position, for mistake as to identity only affects the transaction when identity is a vital element of it.

Thus the difference between the two sets of cases is not when the misrepresentation was made but what effect it had on the mind of the person to whom it was made.

Some unusual facts, involving either larceny by a trick or false pretences, are referred to in a Practical Point at 115 J.P.N. at p. 236. Members of the public are admitted to a betting enclosure on payment of 2*s.* Payboxes are situated outside the enclosure where the public pay and enter. At an exit is another official who issues pass-out tickets. He is not authorized to receive money for his employers. He does, however, take money from members of the public who desire to enter the enclosure, which money he pockets.

The published answer reads as follows:

"We think that these facts upon due proof would substantiate in each case a charge of obtaining 2*s.* by false pretences and not one of stealing by a trick.

"The false pretence is by conduct in the servant putting himself forward as being entitled to accept the money and to give in return a right of admission.

"The payer had no expectation of getting his money back and intended to part permanently with it and to get in exchange the right to enter and remain within the enclosure. We think he parted with the property as well as with possession. We do not think that his not getting or being able to get what he hoped for affects his state of mind at the time of parting with the money."

One would hesitate before arguing with the carefully considered answers given in the *Justice of the Peace and Local Government Review,* but there does seem to be good grounds for considering the facts in this case in the light of the decisions of the cases on mistake of identity. Each of the members of the public parting with 2*s.* to the fraudulent official were intending to do so only to a person authorized to collect the money. The official put himself forward as such a person and the victims parted with their money because they thought he was such a person.

It is true, as the answer says, that the payers intended to part permanently with the money and had no expectation of

getting it back—but so indeed had the firm of Lindsay & Co. in the case of *Cundy* v. *Lindsay, supra*. But although they intended to part with the money they intended to part with it only to the person the official represented himself to be and not to the official himself. In cases of mistaken identity it is necessary for the owner not only to intend to pass the property but also to intend to pass it to a particular person. Only so long as a knowledge of the identity of the person to whom possession is given does not affect the owner's intention to pass the property in goods or money is the transaction unaffected by a misrepresentation.

It is therefore respectfully suggested that there would be evidence to show that the payers did not intend to pass the property in the money to the official who received it and that he could be convicted of the offence of larceny by a trick. It should, perhaps, be emphasized that the matter can be placed no higher than this. It is not possible to assert that in circumstances such as these the offence must be larceny. Whether or not that offence has been committed will depend on whether or not the owner *intended* to pass the property in the money to the fraudulent official.

The intention of the owner will, almost invariably, have to be ascertained from surrounding facts, and therefore each case will come to be decided, as between larceny and false pretences, on the inference to be drawn from certain facts as to the intention of the owner. It is submitted, however, that when those facts fall into a recognizable group, such as one of the two groups disclosed in the above consideration of cases dealing with misrepresentation of identity, then only one inference can be drawn. C.T.L.

MORE THOUGHTS ON ROAD SAFETY

By J. R. POULTON HUGHES

Magistrates, the police and local authority members and officials particularly look to the *Justice of the Peace and Local Government Review* for a lead and guidance on the many aspects of their respective duties and obligations to the public. Yet a glance at past issues of this journal for the last few years shows that the article by Superintendent Frank Elmes on police and motorists (121 J.P.N. 639) is the first occasion for some years on which even this respected journal has given any real space to one of the most intractable social problems of our times.

In the first half of this year, there were 120,038 road casualties, comprising 2,280 deaths (330 children), 27,851 serious injuries (4,606 children), and 89,907 minor injuries. Sir Howard Roberts, president of the Royal Society for the Prevention of Accidents, revealed at the recent National Safety Congress that road casualties in the first eight months had increased to 176,647, including 3,323 killed, and warned that "unless we deal with the problem as being one of the greatest urgency, I fear that this year's figures will be the worst yet."

Add to these ghastly figures the economic loss to the country, estimated in the booklet *Basic Road Statistics, 1957* issued by the British Road Federation as being £169 million for 1956 (£138 million for compensation for personal injury, £16 million for damage to and repairs to property, and £15 million for administration costs), and some idea of the real magnitude of the problem is given, leading to the conclusion that it is time those in authority really gave united attention to a solution. Who are "those in authority" for this purpose? The writer suggests that the blame for the present complacency can be laid well and truly at the feet largely of those people amongst whom this journal circulates, for it is only they who can set in train action on various fronts with the object of making, again to use a phrase from Sir Howard Roberts' address to the National Safety Congress, "every individual in Great Britain realize that road safety matters, and is the inescapable personal responsibility of every single one of us."

The fact must first be faced that amongst the public at large road accidents are now just "one of those things always with us." There is widespread complacency and hopelessness about effecting a cure, and also a widespread ignorance about the cause of road accidents.

Superintendent Elmes classifies the three essential ingredients to a cure as engineering, education and enforcement. He draws attention to the need for a more rigid enforcement of the laws relating to the use of the roads, and asserts that enforcement is the one effective short-term measure open to the community to adopt. Before accepting this assertion, the three "E's" should be looked at in more detail.

Engineering clearly has its part to play. A vast sum of money, insufficient though it is, is being spent on road construction and improvement. The Prime Minister at the opening of the Motor Show (where yet faster potential killing machines were on view) reaffirmed the Government's intention of keeping at least to the programme of road construction announced by the Minister of Transport in July, so that there is every indication that as much money as the Government consider the country can economically afford is to be spent in the immediate future.

A study of accident statistics, however, reveals that even where vast and costly road improvements have been done —new dual carriageways, elimination of bad visibility at corners and so on—accidents continue to happen and even increase in some areas, no doubt due to some extent to the ever increasing number of vehicles on the road. For instance, only recently we read in the papers of 14 vehicles being involved in one collision in the Midlands on a fine new section of dual carriageway which was opened to traffic only a few months ago. Several other examples could be given. The fact is that these new roads and the more powerful vehicles on them are an invitation to greater speed, and speed brings with it a greater risk of accidents.

Obviously, therefore, whilst highway authorities must continue to press on with engineering improvements, there is little hope in this direction of such work substantially reducing the number of accidents in the coming few years.

Other miscellaneous steps are also being taken to tackle the problem. There are the vehicle tests which will soon be compulsory under the Road Traffic Act, 1956, for older vehicles, although again figures show that only a small percentage of all accidents are caused by defective vehicles. Then again there are the accident investigation officers appointed by the Ministry of Transport to the offices of divisional road engineers, specifically to investigate and recommend improvements at "black spots," though their

activities will presumably be restricted again by lack of funds for road works.

Enforcement—and a very much stricter enforcement to be of any use—of the "laws of the roads" than exists at present would, one may surmise, be as unpopular with the police as with the public, but clearly can play its part and should be applied without further question if it would really help to reduce road accidents. To the writer as a layman and car driver, it seems that stricter enforcement could only be applied effectively by a large increase in the number of police officers and particularly mobile patrols, an increase which one imagines is restricted both by lack of funds and a shortage in the number of suitable applicants for the police force.

Further, it is debatable whether the new procedure under the Magistrates' Courts Act, 1957, under which in some summary cases defendants need not appear personally to answer for their parking and other minor motoring offences, would not detract somewhat from the benefits to be gained by stricter enforcement—if one accepts the view frequently expressed that the worst part of the punishment is not the fine but having to appear in public before the bench to answer the charge.

Higher penalties for motoring offences are another remedy, and it remains to be seen whether the higher penalties for certain offences under the Road Traffic Act, 1956, will be of any real value in reducing the toll of the roads.

Only the third "E," education, is left, and this in the writer's opinion is the only really effective method of dealing with this social problem—a method which is practicable from the economic standpoint and which has been proved to be highly successful if vigorously and courageously applied. Road safety propaganda and the training of road users are in their infancy, and the total expenditure on this work is comparatively nominal at present. The work started on a nation wide basis with the invitation to certain local authorities from the Ministry of Transport soon after the last war to undertake, without strict statutory authority, road safety work. Many enlightened authorities accepted the challenge and have done fine work ; they have appointed road safety committees ; and in some places full-time or part-time organizers. Many more have done virtually nothing at all, having adopted the general lethargic attitude to the problem.

The Royal Society for the Prevention of Accidents has done invaluable work, and the police have played a vital part, particularly in the training and testing of children for the cycling proficiency tests of the Royal Society. There have been propaganda poster campaigns, local and national, national campaigns over limited periods with particular themes such as "Road Safety Matters," and "Mind that Child."

That the public is receptive to propaganda is proved conclusively by the fact announced by Sir Howard Roberts at the National Safety Congress that in every month since the "Mind that Child" campaign ended, with the exception of February, child deaths on the roads have been fewer than in the corresponding months last year. That the public do notice posters is proved by the immediate outcry against the "widow in weeds" poster issued some years ago and withdrawn from use—though a London borough council have recently (bravely) issued it again.

There is now little excuse for the local authorities concerned who are doing nothing or very little. A vast field of propaganda and training could be arranged under the statutory powers given for the first time by s. 5 of the Road Traffic Act, 1956. This enables the Minister of Transport, or in relation to Scotland, the Secretary of State or the Minister, with the approval of the Treasury, to provide for promoting road safety by disseminating information or advice relating to the use of the roads. It also gives power to local authorities, who for this purpose are county councils, borough and urban district councils and the common council of the city of London in England and Wales, and county councils and town councils in Scotland, to make arrangements for the same purposes as the Minister may do, or for giving practical training to road users or any class or description of road users, and to make contributions towards the cost of arrangements for the like purposes made by other authorities or bodies.

The Minister of Transport pays 50 *per cent.* grant on approved expenditure within the terms of his circular 730, which covers a wide field of activities. It is understood that the present policy of the Minister is not to encourage any increase in road safety expenditure by local authorities—a policy which, if it is to be applied in the future, is difficult to understand in view of the mounting number of road accidents and the small sums involved compared with other Government expenditure. In any event, if the present Government proposals on finance proceed, it would appear that this percentage grant is likely to be absorbed in the proposed new block grant, presumably leaving the local authorities concerned free within the limits of their economy to spend what reasonable sums they think fit on road safety propaganda and training work.

These statutory powers open the way for the organization of a continuously intensive campaign of propaganda and training in all directions which would achieve immediate results, for the British public are not hard hearted or callous, but have simply not had the seriousness of the problem and the easy cures brought home to them. Television, the papers, wireless and many other fields could be used for propaganda on a much wider scale. Horror tactics in the way of posters and other literature could be used courageously. What member of the public would sooner not have the ghastliness of the toll of the roads brought home to him by "horror" posters than by having one of his children killed or maimed through unnecessary carelessness on the roads ?

Training schemes could be organized and training grounds with proper equipment and staff provided for training child cyclists, motor-cyclists, learner drivers and others. There are plenty of disused airfields near to large towns which could be adapted at little cost and made available by a group of local authorities combining together. Experience has shown that road safety work needs to be organized over a fairly wide area, such as an administrative county, to be really effective, and yet few combined schemes exist. Here, then, is a chance for the local authorities concerned to get together, as they have done in the past over other social problems, to form joint committees where necessary under the Local Government Act, 1933, and really tackle the problem with zest.

Education and training, then, is the least costly but most effective answer to this pressing problem, and combined with better roads and perhaps stricter enforcement of the road laws and higher penalties, would soon bring down accident figures substantially. The public at large, expressing their views through individuals and local bodies, have clearly indicated that they hope "those in authority" will not flinch from their obvious duty.

BLEEP LAW

By A. S. WISDOM

Amid the nine-day wonder produced by the two orbiting Russian satellites or "bleeps" (one complete with space dog) and the resultant clamour of the experts and prophets busy explaining the political and military implications, has arisen a suggestion that a select committee of scientists and lawyers should redraft the law of aerial navigation in preparation for the dawning era of space travel. In particular, it is said, interplanetary law should consider "such tricky problems as traffic regulation for circling satellites, terrestial claims on other planets, how far out into space national sovereignty extends and what laws should govern our relations with any extra-terrestial intelligent beings."

In recent references in the press to controlled missiles and rockets certain expressions such as "outer space" and "stratosphere" have been bandied about recklessly. Without wishing to be accused of becoming too technical, it may be stated that the earth's atmosphere is composed of several layers, commencing with the troposphere which is 10 miles high at the equator. Then follow successively the stratosphere (20 miles high), the chemosphere (30 miles high), the ionosphere (200 miles) and, finally, the exosphere where the atmospheric gases extremely rarified escape into space. Beyond this lies outer space.

Any consideration of the law of the air as it stands, requires an examination into two aspects, which are to a degree co-related. First, what are the private rights at common law relative to the airspace over a person's property? Secondly, on the broader issues of international law, is there anything in the term "the freedom of the air"?

Some may seek comfort in the old common law maxim "*cujus est solum, ejus est usque ad caelum et ad inferos,*" since it might imply that a landowner has the exclusive possession of the airspace over his property. But how far does decided law support this implication?

Telephone and other wires crossing property have been treated as a trespass (*Wandsworth Board of Works* v. *United Telephone Co.* (1884) 13 Q.B.D. 904; *Finchley Electric Light Co.* v. *Finchley U.D.C.* [1903] 1 Ch. 437) and portions of buildings projecting into adjoining premises have been regarded as a nuisance: *Fay* v. *Prentice* (1845) 14 L.J.C.P. 298. In *Gifford* v. *Dent* (1926) 71 S.J. 83, a sign erected over another person's forecourt was held to be a trespass on the airspace, and branches overhanging land may be lopped without the owner of the land giving notice: *Lemon* v. *Webb* (1895) 59 J.P. 564. To complete this miscellany of case law it may be added that a conveyance of land has been held to include the airspace above the land: *Corbett* v. *Hill* (1870) 22 L.T. 263.

Arguing on another limb, Lord Ellenborough in *Pickering* v. *Rudd* (1815) 4 Camp 219 remarked that it was not trespass to interfere with the column of air superincumbent upon a close and that (semble) an aeronaut is not liable to an action for trespass *quare clausum fregit* at the suit of the occupier of every field over which his balloon passes in the course of his voyage. But Lord Blackburn in *Kenyon* v. *Hart* (1865) 6 B. & S. 249 rather unkindly said that he understood the good sense though not the legal reason of Lord Ellenborough's statement.

The weight of these and other cases apparently amounts to no more than that there can be no trespass above ground unless the object giving rise to the trespass has some physical contact with the ground.

Profound lawyers have investigated the questions of trespass, nuisance and interference over an airspace and their opinions vary from the exclusive right of an owner to everything above his land to an indefinite height down to ownership of such part of the airspace as is filled with objects and erections built upon the ground. American law has examined the position in rather more detail and it seems (though the point is not entirely clear) that a landowner possesses the airspace above his property only to the extent necessary for the enjoyment of the land itself, or as is occupied or used in connexion with the land: *Causby* v. *United States* (1945) U.S. Av. R. 1. But until the courts have given an authoritive decision the matter remains in some doubt so far as English law is concerned.

With the introduction of the aeroplane, statute law has stepped in and s. 9 (1) of the Air Navigation Act, 1920 (now reproduced in s. 40 of the Civil Aviation Act, 1949) provides that no action lies in trespass or nuisance by reason only of the flight of an aircraft over any property at a height above the ground which, having regard to wind, weather and all other circumstances, is reasonable or the ordinary incidents of such flight so long as the provisions of the Act and any order made thereunder are duly complied with; but any material damage caused by an aircraft can be recovered without proof of negligence or intention.

In the early days of air travel it was expected that international law would ultimately concede that the freedom of the air should be applied to the airspace over the lands and territorial waters of individual states in much the same way that ships have freedom on the high seas. In the broad sense this means that all foreign aircraft should be entitled to unrestricted access across the territory of other states. The converse of this theory is to apply the *cujus est solum* maxim so that each state has complete sovereignty over its own airspace unlimited in height. But there are possible variants between these means; one being to restrict the maxim to the lower airspace and making the upper airspace above certain heights unrestricted to foreign aircraft. Unfortunately, the rule of "exclusive sovereignty" applies today.

Much of English aerial law is derived from provisions of conventions on international civil aviation which have subsequently been ratified by Parliament. The Chicago Convention of 1944 recognized that each state has complete and exclusive sovereignty over the airspace above its territory. Scheduled international air services can only operate over foreign territory by treaty or agreement between the countries concerned, but other aircraft can make flights into or in transit non-stop across foreign territory and make stops for non-traffic purposes without having to obtain permission.

It is abundantly clear that the existing law, whether it be English or private international law, is far too pedestrian and elementary to be able to contend with the many legal problems bound to arise now that earth satellites are an accomplished fact. It is as equally certain that with the rapidly approaching age of space stations, automatic rockets and (more ultimately) of interplanetary missiles and ships, an entirely new legal attitude and approach will be required. In fact, it is high time that the select committee proposed in the opening paragraph started work.

Already diplomatic ripostes have begun over the launching of the first satellite. According to one report, the Americans complain that it is continually infringing upon their national airspace. But no, reply the Russians, the satellite was fired from our territory into our airspace, it is simply that the American continent is revolving below the satellite.

THE BRIDGE OF HUMANISM

By D. E. P. GILES

The problems before the International Monetary Fund which were under consideration in Washington this September, together with the terms of reference of the International Parliamentary Union Conference held in London, have some relation to the aims of the International Humanist Congress, in their common association with similar world problems.

Sir John Boyd Orr, in his presidential address to the International Humanist and Ethical Union Second Congress, held in London, said "We live in the biggest and most rapid phase of transition in the evolution of the human society. Science, which has advanced more in the last 50 years than in the previous 2,000, is pushing mankind into a new age which will differ from that of the early 19th century, more than that differed from extinct early civilization. The 19th century political structure of the world has been shaken to its foundations. The only hope for the survival of our civilization is in radical readjustment to the new conditions which modern science has created. We are now one world in terms of communications, but split by two ideologies backed by weapons of vast destruction, and survival of the human race depends on the evolution of a new world order in which war will be impossible."

Sir Winston Churchill in his recent address to the American Bar Association, said, "We have now reached a point where nations must contrive a system and practise to resolve disputes peacefully." He called for a change in the United Nations, saying, "It is certain that if the Assembly continues to make its decisions on the grounds of enmity, opportunism or merely jealousy and petulance, the whole structure may be brought to nothing."

The International Humanist and Ethical Union has been formed to bring into active association, groups and individuals throughout the world, interested in promoting ethical and scientific humanism, understood as dedication to, and responsibility for human life by maintenance, furtherance and development of human values, cultivation of science, loyalty to democratic principles, and repudiation of authoritarian principles in all social relations. Humanism is opposed to any form of spiritual and political imperialism. A humanistic approach to and treatment of social problems is in principle based on respect for the human dignity in each of our fellow beings, irrespective of class, sex, nation, race and colour: on the right of each human being to a free development of his personality, and on furtherance of a sense of human responsibility towards our neighbour. Certain structures of state and society correspond more fully to those bases than others, and political and social democracy will do so more than any totalitarian form of organization.

Sir John told the Congress that "the advance in physical sciences has made possible the production of an abundance of material goods, and automation has increased the output. Markets for a world economy, expanding to keep up with the advance of technology can be found in developing the poverty-stricken countries. All the great countries are giving aid to the poor countries, but it should be given on a business footing with reciprocal terms in the expansion of markets. This assistance should be channelled through the specialized agencies of the United Nations which were established for the purpose."

Recently, distress signals have been sent out by the more important stock markets in the world, caused *inter alia* by factors like the slumps in the wholesale prices of many commodities such as copper, tea, rubber, and wheat, some of which were less than half of what they were a year ago. Exports to India, Rhodesia and Chile are threatened. Many industrialists fear that the large exports of machinery and equipment to the undeveloped countries, on which so much of the prosperity of the older industrialist countries has been based, will be seriously curtailed in 1958.

One of the problems before the International Parliamentary Union Conference was the stabilization of the prices of primary products.

A new light has been shed upon the problem of undeveloped countries by the study of Dr. Gunnar Myrdal, *Economic Theory and Undeveloped Regions*. Arthur Hazlewood, Institute of Statistics, University of Oxford, analysed this study in his Third Programme talk, "The Inequality of Nations." "This book challenges more current economic theory about underdevelopment, and reflects in particular on the increasing disparity between rich and poor countries resulting from the free play of economic forces. If the conditions obtaining in our own pre-war distressed areas are considered, then Dr. Myrdal's principle of circular and cumulative causation can be better understood."

Many local government and government officers will remember the special policy of treatment in these areas. To recapitulate: "The pre-war distressed areas in Scotland, Wales, the north-east coast, suffered initially from a collapse of the demand for the main product. The consequent employment and low spending power deterred other industries from moving in. Investment by local authorities and public utilities tended to be cut down through lack of money and demand, and this in turn made the situation worse. Rates and charges even had to be increased and this acted as a further deterrent to new industrial expansion. A deliberate policy of intervention put the areas on their feet." The aims of the Distribution of Industry Act, 1945,* were for the upgrading of basic services, not only to serve industry but to attract industry. The New Towns Act, 1946,† afforded financial assistance to local authorities providing, *e.g.*, water and sewerage in advance of rateable value. A directive policy was adopted by the Board of Trade in starting up industry in these areas. Conditions were also improved when John Boyd Orr turned nutritional research into a social instrument with his Food, Health and Income Survey.

The policy conclusion Myrdal draws from his analysis is that active intervention by governments, unhindered by inadequate economic theory is essential, if anything is to be done about international inequality. He pleads the need for a double standard of morality in international economic

* 8–9 *G.* 6 *c.* 36.
† 9–10 *G.* 6 *c.* 68.

relations—one law for the rich and another for the poor. In the circumstances of today, it is neither inconsistent nor illogical to demand that India, for instance, be allowed to pursue a different policy in international trade from, say, that of the United States. The recovered prosperity of our own distressed areas benefited the country as a whole and it can be seen how the prosperity of the undeveloped countries is bound up with the richer countries. Yet the basic philosophy of international arrangements and institutions such as the general agreement on Trade and Tariffs, and the International Monetary Bank is one of equality of treatment and non-discrimination even though in practice the rules have proved impossible.

In this connexion it may be useful to consider a brief note of the progress in social welfare, nationally and internationally.

During the 19th century, there was at first great opposition to all the social legislation forced upon us by the ravages of disease, and the problems of the industrial revolution. Legislation for administration in public health, education and industrial welfare was achieved by men of vision in the face of objection. In the 20th century, the researches of Beatrice and Sidney Webb, together with George Lansbury into the Poor Law abuses were not implemented for a number of years. Progress was made in 1942, towards what Churchill called a national foundation instead of a class foundation, by the scheme to abolish undeserved want and fear for the future contained in the Beveridge Report.

When Franklin D. Roosevelt put before the world the goal of freedom from want, and the nations decided to set up the Food and Agricultural Organization, they had before them the conclusions reached at the Hot Springs conference in 1943, for the war time planning of food and food production. Then it was determined that food surpluses which were formerly destroyed were not surpluses in the world sense, and could be distributed among the Allies. The F.A.O. appointed John Boyd Orr as the first Director-General, who co-ordinated food policies and provided farmers with guarantees and settled markets and a fair return.

The Universal Declaration of Human Rights adopted by the General Assembly of the League of Nations in 1948, declared "Everyone has the right to security in the event of unemployment, sickness, disablement, widowhood, old age or lack of livelihood beyond his control." This has not yet been universally implemented.

At the Congress, Sir John Boyd Orr, spoke of the accelerating growth of world population and said that if the present rate continues the population figure will be doubled in the next 40 to 50 years, and another war might be fought for food. If the best methods now in limited use were applied to all land in the world, sufficient food could be produced to provide for three times the present population. The present problem was the passing of the optimum level of population.

Professor G. D. Parikh, Professor of Economics at Bombay University, told the Congress, "The issue between democracy and totalitarianism is still to be joined; democratic government dominated by the prevalent notions of development seems to be fighting a losing battle. Unless the fundamentals underlying the prevalent notions of development are boldly faced and examined, the future of freedom in these countries is dark and dismal."

India today is in midstream between the currents of democracy practised by the Congress party, the parliamentary instrument through which Pandit Nehru has ruled India, and Communism. The present dominant clique of Westerners is challenged by the Gandhians with their obscurantism about science and industrial progress.

The Communists are seeking to achieve the same ends as Nehru, but by coercion rather than persuasion. "The full power of the State would be used to change Indian Society, to end religious obscurantism, to end regional and language quarrels, the grotesquely uneconomic subdivisions of land holdings, and break the money lenders' grip on the peasants. A group of younger people believe that India's future lies in continued association and competition with the West. Their difficulty is to arouse Indian interest in the West, when the West seems so remote and uninterested. It is here that the West (particularly Britain and America), can play a part in deciding the future course of Indian policy. The bleak alternatives are to watch the chief bridge between Asia and the Atlantic Community decay or be destroyed."

It is here that the contacts provided by the Humanist Society are useful. One Indian delegate spoke of the beginning of the movement in India in 1946, and said that its teaching cuts across differences in castes, creed and sex. Socially and economically India is still in the 19th century if not earlier, and has to face enormous problems and paradoxes. The Indian Renaissance Institute organizes study camps and publishes an influential magazine. It acts as a dynamic life in its influence on political, economic and social action programmes.

It is written in the Indian Constitution that "the State is to strive to promote the welfare of the people, by securing and protecting as effectively as possible, a social order in which justice, social, economic and political, shall inform all the institutions of national life." The meaning of almost every word in that sentence has been defined and built up in the civilization of the West. Hindu law is 3,000 years old, and the welfare it considers is the welfare of the family. It seems, therefore, that the democratic way of life is more suited to the needs of India.

Yet many Indians are looking to the progress made by China and Russia. Professor W. Macmahon Ball, Professor of Political Science in the University of Melbourne, in his talk on the Third programme, considered the study made by Maurice Zinkin, "Development for Free Asia," and especially the question whether the procedures of Western democracy can get up enough speed in economic development. "Capital investment means a revolution in Asian habits and culture. They must rigorously submit themselves to the discipline of the machines and business routines of the economically advanced countries. The problem is how to persuade them, as the majority are still peasants, and saving means a cutting down of bare subsistence. It must adopt the commercial and economic traditions of Britain, but it was unreal to expect Asian countries to adopt the economic or political arrangements of *contemporary* democracy."

A further difficulty was stressed by Professor Parikh when he said at the Congress, "There does not exist in most cases any administrative machinery in the undeveloped countries which can measure up to the tasks of development."

As we read of the help given to backward countries by communist technicians and advisers, it seems that a policy of secondment could well be adopted by the democracies for the undeveloped countries of the Commonwealth, and other Asian countries, pending their full development. In the case of local government, and government officers, a difficulty exists in the continuation of superannuation rights. Rules‡

‡ S.I. 1919, No. 1463 (Superannuation Local Government and Colonial Service Interchange Rules, 1949) and S.I. 1952, No. 133.

have been made enabling public servants abroad or in the Commonwealth or a colony or a foreign country, to have their existing rights frozen until ordinary pensionable age. Service abroad would be more attractive if pension rights could continue during service abroad.

The Colombo Plan recognized that such help was necessary and made some provision.

Professor Horace L. Fries, Professor of Philosophy, Columbia University, spoke to the Congress on "Humanist mind in the making." "In the political traditions of democracy there is a viewpoint on society, from which the provisions of government, for protection, order, security of rights and welfare are seen, not as impositions of higher authority, but as depending ultimately on neighbourly need and co-operation. . . . The possibility of man's assuming a hitherto unimagined responsibility for the direction of life on this planet stands out against the alternative of present drift into a seriously deteriorated condition . . ."

Lady Flemming spoke on "Personal Life" in the doctrine of Humanism, and said "As soon as we enter the field of international affairs of racial relations, of social policy, or of general education, humanists must co-operate with people of all religions. The task of humanist societies is to help their members to become world and national citizens . . . to help their members to influence policy in a responsible informed and liberal spirit."

Dr. J. In't Veld of the Institute of Social Studies, The Hague, replied: "A humanist movement should be aware of its duty to apply its teaching to the practice of daily life." He spoke of the social welfare work in the Netherlands, including an association called "Humanitas," and the selected counsellors who worked in hospitals, labour camps, prisons, in the armed forces and among the elderly.

B. W. Schaper, lecturer in history, University of Amsterdam, spoke on "Social Life" of the humanist doctrine.

Other delegates from Italy, Belgium, Germany, Vienna and Norway, spoke of the work of the Humanist movement, and the work achieved in their countries.

Dr. J. Bronowski told the Congress that the method of science is the expression of the drive for knowledge and for truth which makes men human . . . The real foundation of wise policies lies in understanding that the methods by which scientists investigate can be applied to the problems of our society.

The chief recommendations of the Congress were that the International Humanist and Ethical Union should actively support the work of the United Nations Organization, especially Unesco, and its furtherance of scientific investigation, and should seek to establish consultative status with Unesco. It was felt that the problems of the underdeveloped regions are of supreme importance for the material and spiritual well being of mankind as a whole. Policies aiming at such improvements should be undertaken with due respect to democratic values, and should be accompanied by efforts to achieve the education and enlightenment of the masses.

"The common people of all races are kindly and co-operative. There is evidence that society is slowly moving towards an adjustment to new world conditions. Although the United Nations has not been the success which the people of the world hoped for, it is a great advance in the march of mankind towards a saner and a happier world, and there is a strong and informed body pressing for its improvement.

"Progress has been made in other fields also, the conquest of disease in all other countries, and a rise in the standard of living of the common people in most. Except for the fear of war, the world today is a more kindly and comfortable place to live in than it was in the 19th century, when living conditions were better than in earlier centuries. In the West, this progress dates from the Renaissance, and is due to men of independent thought and courage."

Sir John Boyd Orr ended on a note of hope and encouragement.

"The most valuable contribution we can make to human welfare, is to keep open this source of progress, to resist any encroachment on freedom of thought and speech. By defending freedom, by declaring what we believe to be the truth, by our support of movements for the physical and ethical advance of all mankind, we in our day can make our contribution to progress."

Acknowledgements: Talk by Arthur Hazlewood, Institute of Statistics, University of Oxford. *The Inequality of Nations* on *Economic Theory and Undeveloped Regions*, by Dr. Gunnar Myrdal. Third Programme, September 9, 1957. Talk by W. Macmahon Ball, Professor of Political Science in University of Melbourne. *Development and Democracy in Asia* on the book by Maurice Zinkin, *Development of Free Asia*. Third Programme, September 18, 1957. "*India in Midstream*," William Clark. *The Observer*, August 11, 1957.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Donovan and Havers, JJ.)

NOTTINGHAM AREA NO. 1 HOSPITAL MANAGEMENT COMMITTEE *v.* OWEN

October 15 and 16, 1957

Public Health—Nuisance—Black smoke from chimney—Hospital premises—Hospital under National Health Service scheme—"Premises occupied for the public service of the crown"—No jurisdiction in justices to hear complaint—Public Health Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 49), *s.* 106.

CASE STATED by Nottingham city justices.

A complaint was preferred by the respondent, Mr. T. J. Owen, town clerk of Nottingham, against the appellants, the Nottingham Area No. 1 Hospital Management Committee, alleging that on July 12, 1955, a notice under the provisions of the Public Health Act, 1936, to abate a nuisance arising at the General Hospital, Nottingham, from a chimney emitting black smoke in such quantity as to be a nuisance was served on the appellants, being the persons by whose default the nuisance arose, and that the appellants had made default in complying with the requirements of the notice. Objection was taken on behalf of the appellants before the justices that they had no jurisdiction to entertain the complaint by reason of s. 106 of the Public Health Act, 1936, it being submitted that the hospital premises were "premises occupied for the public service of the Crown." The justices overruled the objection, held that they had jurisdiction, and made an order that the appellants should within four calendar months of the service upon them of the order or a copy thereof execute all works necessary to abate the nuisance. The appellants appealed.

Held: that the hospital premises were such as were required and created by statute, and, being provided under the National Health Service Act, 1946, were provided for the public service of the Crown; and, therefore, they were "premises occupied for the public service of the Crown" within the meaning of s. 106 of the Public Health Act, 1936, and the justices had no jurisdiction to hear the complaint.

Counsel: *Winn*, for the appellant hospital management committee; *Elson Rees* for the respondent local authority.

Solicitors: *Solicitor, Ministry of Health; Sharpe, Pritchard & Co.*, for Town Clerk, Nottingham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MACFISHERIES (WHOLESALE & RETAIL), LTD., *v.* COVENTRY CORPORATION

October 18, 1957

Food & Drugs—Fish—Exposure for sale—Risk of contamination—No contamination injurious to health—Food Hygiene Regulations, 1955 (*S.I.* 1955, *No.* 1906) *reg.* 8 (*a*).

CASE STATED by Coventry justices.

At Coventry magistrates' court eight informations were preferred by the respondents, charging the appellants, MacFisheries (Wholesale & Retail), Ltd., that they, being persons engaged in the handling of food, did permit the food (fish, crustacea, and sausage) to be so placed as to involve the risk of contamination, contrary to reg. 8 (*a*) of the Food Hygiene Regulations, 1955, made under s. 13 of the Food and Drugs Act, 1955.

According to the facts found by the justices, the fish was laid out in the same way as any other fish in any other shop. They found that the risk of contamination was not such as to be injurious to health, but convicted the appellants because they held that the risk of contamination referred to in reg. 8 (*a*) of the regulations was the risk of any contamination, whether or not it was injurious to health. The appellants appealed.

Held: that the object of the statute and the regulations was to procure the protection of public health, and that, if there was no contamination which was injurious to health, there was no offence. The justices should have dismissed the informations, and the appeal would be allowed and the convictions quashed.

Counsel: *Griffith-Jones*, for the appellants; *Wrightson*, for the respondents.

Solicitors: *Simpson, North, Harley & Co.; Sharpe, Pritchard & Co.*, for Town Clerk, Coventry.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

IN RE MELIA

October 18, 1957

Magistrates—Warrant—Indorsement—Form signed and pinned on to warrant—Indictable Offences Act, 1848 (11 *and* 12 *Vict. c.* 42), *s.* 12, *as amended by Magistrates' Courts Act*, 1952 (15 *and* 16 *Geo.* 6 *and* 1 *Eliz.* 2 *c.* 55), *Sch. V.*

MOTION for *habeas corpus*.

The applicant, Matthew Melia, was arrested in London on a warrant issued in Dublin for wilful neglect to maintain one of his daughters and was brought before a magistrate at Clerkenwell magistrate's court. The magistrate signed a form which had been in use at that court for some time, and, according to the practice which obtained there, the form was pinned to the warrant by a police constable. It was contended for the applicant that the warrant had not been properly indorsed in accordance with the provisions of s. 12 of the Indictable Offences Act, 1848, as amended by the Magistrates' Courts Act, 1952, sch. V.

Held: that there had not been an indorsement of the warrant as required by the statute, and, therefore, the appellant had been illegally detained, and was entitled to be discharged.

Counsel: *Henry Harris*, for the applicant; *Lawton, Q.C.*, and *Stabb*, for the Metropolitan Police Commissioner; *Gage* for the applicant's wife.

Solicitors: *J. Dalton, Solicitor, Metropolitan Police; Hempsons.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

BOOKS AND PAPERS RECEIVED

Sixth Annual Report 1956–57. Mersey River Board. A. H. Jolliffe, Clerk and Solicitor, Warrington.

County Court Notebook. Erskine Pollock. Solicitors' Law Stationery Society, Limited. London. 1957. Price 2*s.* 6*d.* net.

Family Law. By P. M. Bromley, M.A. (Oxon), Barrister-at-Law. London. Butterworth & Co. (Publishers) Ltd., 88 Kingsway, W.C.2. Price 55*s.* net, postage 1*s.* 6*d.* extra.

The Offenders. Society and the Atrocious Crime. By Giles Playfair and Derrick Sington. London. Secker and Warburg, 7, John Street, Bloomsbury, W.C.1. Price 25*s.* net.

Year Book 1957–1958. County Councils Association. Eaton House, 66a Eaton Square, S.W.1. Price: 7*s.* 6*d.* net.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

SPECIAL ORDERS OF EXEMPTION

In your issue of November 24, 1956, 120 J.P.N. 745, you were so good as to publish a letter from me on the subject of charges for special orders of exemption, with particular reference to the previous Christmas Eve, Boxing Day and New Year's Eve grants of the same.

Reviewing reports I had received from 558 provincial licensing divisions I was able to say "From the angle of general practice, it is of interest to note that these figures show that in over 75 *per cent.* of the divisions . . . there was one order and a single inclusive charge."

Concerning December last I have received 639 reports from local licensed victuallers' association secretaries and these show that in only 13·8 *per cent.* of the divisions involved is a separate charge made for each evening involved. In 76·7 *per cent.* of the divisions there was a single inclusive charge which was in accordance with the Home Office view which I quoted in my last letter.

It has been suggested to me that in some of the minority of cases where separate charges are made for each evening, the position has been the result of an insistance by auditors that such should be the case. It seems desirable to observe that such officials have no right to usurp the discretion of the justices and persistance on the point should be taken to a higher level.

Licensees in the minority divisions alluded to still hope that the justices for their divisions will not continue to penalize them unnecessarily.

Yours faithfully,
LEONARD R. N. PERCEY,
General Secretary and Manager.

PERSONALIA

APPOINTMENTS

The Queen has appointed Mr. Abraham John Flint to be a Judge of county courts. By direction of the Lord Chancellor he will succeed Judge Nicklin as the Judge of Circuit 18 (Nottingham, Doncaster, etc.). Judge Nicklin, formerly a practising barrister on the Northern circuit, has been appointed to Birmingham county court circuit. Judge Nicklin went to Nottingham in 1955.

Mr. W. M. Bennett, B.A. (Oxon), at present deputy town clerk to Yeovil, Somerset, corporation, has been appointed clerk to Gipping, East Suffolk, rural district council in succession to Mr. E. Harwood, who is leaving to take up an appointment at Barnstaple, North Devon. Mr. Bennett is expected to commence his duties in December. He is 41 years of age.

Mr. S. Cowburn, who has been deputy clerk to Stafford rural district council for the past seven years, has been appointed clerk, with Mr. S. Jackson as chief financial officer and treasurer. Both appointments follow the resignation of the present clerk, Mr. R. Burdge, *see* our issue of October 24, last.

Mr. R. H. Harbour has been appointed whole-time clerk to the justices of the three petty sessional divisions of Crewkerne, Wincanton, and Yeovil, with effect as from September 6, last. The appointment has been approved by the Secretary of State. This whole-time appointment is the first to be made by the Somerset magistrates' courts committee. On July 1, 1955, Mr. Harbour was appointed part-time clerk to the Yeovil division (which comprises the former divisions of Yeovil borough and Yeovil county), and on July 1, 1956 he was also appointed as part-time clerk to the Crewkerne division. Mr. L. Kendray Archer retired from the part-time appointment as clerk to the Wincanton division on September 5, last, and the Somerset magistrates' courts committee have decided to make the appointment for the three divisions a whole-time one.

Mr. Clifford Singleton, assistant borough treasurer of Southend-on-sea, Essex, has been appointed borough treasurer of Fleetwood, Lancashire, in succession to Mr. H. Smith. He takes up the appointment in February, next year.

Mr. C. P. Whitlock, M.A., LL.B.(Cantab.), has been appointed assistant solicitor to Great Yarmouth, Norfolk, county borough council. Mr. Whitlock was in the Sudan political service from 1946 to 1954 and from 1955 to date has been assistant solicitor to Lowestoft, Norfolk, borough council. He succeeds Mr. T. R. Trower, who is now assistant solicitor to Carlisle county borough council. Mr. Trower, who was admitted in October, 1952, having served his articles with the town clerk of Norwich, was on National Service from November, 1952 to November, 1954. Since then he has been temporary assistant solicitor to Norwich corporation and since January, 1955, in the post Mr. Whitlock now holds.

Miss E. G. Faulkner has been appointed a probation officer in the Lancashire probation service. A Home Office trainee, she will complete her training on December 13 and take up an appointment at the Probation Office, 5, Clegg Street, Oldham, on December 16, next.

Miss B. Enid Wood has been appointed a probation officer in the Lancashire probation service. She is at present secretary at the Probation Office, Plymouth, and will take up an appointment at the Probation Office, 122 Katherine Street, Ashton-under-Lyne, on November 18, next.

RETIREMENTS

Judge Ernest Evans has retired after 15 years as a county court Judge in North Wales. He will continue to act as chairman of the Anglesey and Cardiganshire quarter sessions.

Mr. Thomas Sowerby, clerk to Lakes, Westmorland urban district council since its formation 22 years ago, has retired. He is succeeded by the present deputy clerk, Mr. G. A. Wade. Mr. Sowerby had spent 45 years in local government service. He received his training on his native Penrith urban council's staff and in 1920 became accountant, collector and assistant overseer to the old Ambleside urban council in Westmorland. With the reorganization of Westmorland local authorities in 1935, he became first clerk to the new Lakes urban council which took in a large section of the Lake District and had its headquarters at Ambleside.

Chief Inspector C. Higginson, head of the Warrington and Newton-le-Willows sub-division of the Lancashire county police, has retired.

MAGISTERIAL MAXIMS, XXXI

There was once a Certain Court Official who, in the Little Spare Time he managed to find after the Discharge of his Official Duties, numerous and varied, in a Magistrates' Court, beguiled himself by penning certain Effusions for a Publication, most Respected and Old-Established, circulating most Widely in all Branches of the Legal Profession, Bench, Bar, and, in Military Parlance, all Other Ranks.

It so Chanced that, the Time for his Annual Holiday having arrived, and having decided to grace the West Country with his presence, he Conceived the Idea of taking with him a Writing Pad and a supply of pencils, so that in the intervals of bathing in the Western Sea of Avalon, he might, whilst lying on Sandy Beaches or in Shady Coves, out of the Heat of the noon-day Sun, indite a few of his Efforts for submission to his Editor in due course, and when his Short Vacation had come to a Triumphant close.

Alas, however, for his well-Intentioned Schemes, owing no doubt to some Higher Misunderstanding of the Dates when he was to be Away from his Courts, Inclement weather and Overcast skies, his difficulty was to find, Not Shady Coves, but Sunny Spots, not Sandy Beaches, but a Dry place where he might Rest to apply his Pencil to Paper without fear of rheumatism, or Colds in the Head.

Consequently, when he returned to his Place of Toil, the Pads of Paper were still virgin, and the so-carefully-sharpened pencils still retained their needle-sharp points—for Nothing had been Done !

Thinking the Matter over with some care, he felt that there must be some Maxim to be learned from his Experience (apart from the Desirability of Taking holidays in January, and thus avoiding the English Summer) and racked his Brain for some apt quotation to suit the occasion. With some bitterness he considered the remark of the Antients, "QUID EST DULCIUS OTIO LITTERATO" properly, for once, construed as "What better than leisure for literary pursuits" as being quite unsuitable, but he recollected also, and with some Self Consolation that it would be better to remember "OTIO QUI NESCIT UTI, PLUS NEGOTI HABET, QUAM SI CUIST NEGOTIOSUS ANIMUS IN NEGOTIO," which applies to Clerks to Justices as well as to More Leisured individuals, meaning, as it does (or ought) "He who escapes from toil, should give no backward glance," or more inaccurately, yet more aptly, "Let not a Stone on the Beach remind you of a "Stone" on your Office shelf."

AESOP II.

CHOPPING AND CHANGING

Larceny and its cognate offences still appear to be the choice of those embarking upon a criminal career. Most astonishing are the variety of the circumstances and the ingenuity of the methods employed in these anti-social activities.

Two episodes are worth a mention for their literary associations. A man who pleaded guilty, at Bristol quarter sessions, to breaking and entering a shop with intent to steal attributed his lapse from virtue to the drinking of "scrumpy," or rough cider. He had, in his statement to the police, made light of the preparatory work of removing from the window of a shop a substantial iron bar, describing it as "nothing more than a metal strip." Whether this example of litotes was due to modesty, or to a belief that the gravity of the offence might thereby be palliated, did not appear; but it gave the prosecutor the opportunity of commenting that the beverage the accused had imbibed must have given him the strength of 10. (The implied comparison with Sir Galahad seems invidious). When we read the item in the *Western Daily Press*, we thought at once of Dr. Grimesby Roylott in *The Speckled Band*. That gentleman, it will be remembered, warned Sherlock Holmes, "'I am a dangerous man to fall foul of'"; so saying "he seized the poker and bent it into a curve with his huge brown hands." This feat was not so impressive as intended, for Holmes, "with a sudden effort, straightened it out again."

At the Central Criminal Court, shortly before the Long Vacation, "two rather amateurish groups of people" were charged with breaking and entering a shop and stealing a safe therefrom. Counsel for the prosecution likened the circumstances to those in the film, *The Lavender Hill Mob*. For the malefactors belonged to two rival gangs, the time and place of whose activities happened to coincide. Each group at first mistook the other for policemen; when they discovered their mutual mistake, they decided to work together. As might have been expected in this comedy of errors, the responsibility for the eventual appearance of the real police on the scene was attributed by each team to its competitors. Here, again the *dénouement* is reminiscent of that in Sherlock Holmes's adventure of *The Red-Headed League*.

Of two recent cases, reported on the same day in the *Liverpool Daily Post*, only one is concerned with larceny; but in other respects they are strangely alike. In the stipendiary's court at Liverpool a young man was convicted and fined for stealing (of all things) a guitar, in most unusual circumstances. He had been allowed by the owner of the guitar "to play a tune on it in the street"; but he carried this musical joke too far when, instead of handing it back, he ran away with the instrument and was only caught after a long chase, which involved a climb over a garden wall. In the second case, at Birkenhead magistrates' court, another young man was convicted and fined for disorderly behaviour in strumming on a guitar in a public street at 1.15 *a.m.* What mischievous sprite, one wonders, is hovering over Merseyside, in the autumnal air, to produce this sudden epidemic of guitarral affections?

Libellous jokes about alleged rapacity, in money matters, among the folk across the border are many and various; but the prize must surely be taken by a real-life story from Edinburgh. There, reports the *News Chronicle*, a woman had been making a fairly considerable income by first stealing articles from shops, and subsequently taking them back to where they came from, complaining of some alleged defect in them, and asking for her money back. This ingenious ruse seems to have succeeded on a number of occasions before its discovery landed her in gaol.

Finally, again from the *News Chronicle*, comes the story of what that journal aptly calls the "chop-lifter." This aspirant to notoriety (aged only 17) joined another youth in planning "a bag-snatch in the boldest money-grabbing tradition." For a week they marked the daily journey, from the direction of a bank, of an elderly man carrying an attaché case. Having decided on their tactics, they leapt upon him as he passed a doorway where they were lurking, snatched his attaché-case and ran. One of them got away; the other was captured, still clutching the booty. Inside the case were *four chump chops*. The owner was not, he apologetically explained, a bank-messenger, but an old-age pensioner. He was one of those punctilious persons who always do their shopping at the same hour, and the chops (or some of them) were for his lunch. Such are—

> "The heart-aches and the thousand natural shocks
> That flesh is heir to."

A.L.P.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

Opening the new Session of Parliament, Her Majesty the Queen said that the Government intended to introduce legislation amending the law relating to the adoption of children and providing for the supervision of those who take children into their care for payment. They would continue to pay particular attention to penal reform and the treatment of offenders, and would develop improvements in the prison system in the light of an imaginative programme of research.

Details of these proposed measures are not yet available. Consultations are in progress with the children's societies with regard to the Bill on Adoption and the Protection of Children. The adoption provisions are expected to follow the recommendations of the Hurst Committee which reported in 1954.

A debate on the Wolfenden Report is expected to take place in the Commons before the Christmas Recess, but any legislation introduced this year would only deal with the law relating to prostitution and would leave the more controversial homosexuality provisions to future sessions or future Governments.

Other Government Bills which would be introduced, if Parliamentary time permits, would bring certain additional offences within the jurisdiction of summary courts and another would give power to attach salaries and wages of men who fall into arrears on maintenance orders.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Wednesday, November 6

TRUSTEE SAVINGS BANKS BILLS—read 1a.

Friday, November 8

PUBLIC WORKS LOANS BILL—read 1a.

ADDITIONS TO COMMISSIONS

NORFOLK COUNTY

Peter Theodore Allard, Hargham Road, Attleborough, Norfolk.
James Douglas Alston, South Lopham Hall, Diss, Norfolk.

WESTMORLAND COUNTY

Mrs. Elsie Holme, Hackthorpe Hall, Clifton, Penrith.
Mrs. Nora Manson, Croft House, Carr Bank, Milnthorpe, Westmorland.
Hugh Wykeham David Pollock, Winderwath, Penrith.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Young person—Proceedings after supervision order—Mental defective.*

A young person, who normally resides at A, is found by the court at B to be in need of care and protection and is placed under the supervision of a probation officer for the court at A. Since the order was made offences of indecent assault and possibly carnal knowledge have been committed against the girl and the probation officer has brought her back to the court at A under the provisions of s. 66 of the Children and Young Persons Act, 1933. It now appears that the girl may be a mental defective. The reference in s. 8 of the Mental Deficiency Act, 1913, is to "a child brought before a court under s. 58 of the Children Act, 1908." Section 108 (5) of the Children and Young Persons Act, 1933, enacts that "references in any Act to any enactment repealed and re-enacted with or without modifications by this Act shall be construed as including references to the corresponding provision of this Act." Section 58 of the Children Act, 1908, did not contain any provision corresponding to s. 66 of the Children and Young Persons Act, 1933, and it appears, therefore, that the court cannot deal with the girl under s. 8 of the Mental Deficiency Act, 1913. I appreciate that the note to s. 8 in *Clarke Hall and Morrison* refers to ss. 60–66 of the 1933 Act, and that as s. 66 is headed "supplemental" it is incidental to ss. 60–65 which do replace corresponding provisions in s. 58 of the Children Act, 1908. In view of the grave effect of ordering a petition to be brought against the will of the parents, I feel, however, that s. 8 of the Mental Deficiency Act, 1908, must be strictly construed. Your opinion on this point would be appreciated. Further, if you are of opinion that s. 8 of the Mental Deficiency Act, 1913, is not applicable, do you agree that the court could take no further action under s. 66 of the Children and Young Persons Act, 1933, and allow the police to bring a fresh complaint that the young person is in need of care or protection as offences have been committed against her and the court could then act under the Mental Deficiency Act. RILKA.

Answer.

On a strict interpretation of s. 8 of the Mental Deficiency Act, 1913, and having regard to the terms of the repealed s. 58 of the Children Act, 1908, we are of the opinion that the court cannot deal with this young person under the first mentioned section, either after supervision under the provisions of s. 66 of the Children and Young Persons Act, 1933, or if she were found to be in need of care or protection upon a fresh complaint.

We do not agree that the court could take no further action under s. 66, *ibid.* If the court is of opinion that it is desirable in her interests to send her to an approved school or to commit her to the care of a fit person it has the power to do so, and must consider whether or not to exercise that power.

If she were detained in an approved school it might be possible for her to be dealt with under the provisions of s. 9 of the Mental Deficiency Act, 1913.

2.—Contract—*Advertisement—Invitation to offer.*

One article is advertised for sale in a paper appropriate to the particular type of goods, a description thereof being followed by a monetary sum. I should esteem your advice as to whether the advertisement constitutes an offer or an invitation for offers. Would the first person tendering the sum of money mentioned in the advertisement be entitled to receive the article, the tender being in these circumstances taken to be the acceptance of an offer made by the advertiser, in which case some reliance might be placed upon *Carlill* v. *Carbolic Smoke Ball Company* (1893) 57 J.P. 525? Does the advertisement and a letter enclosing cheque for the sum mentioned constitute a contract? On the other hand can the advertisement be regarded as being analogous to a price list in which specific goods have definite prices indicated against them. In this case is a price list an offer or an invitation for offers, to which the cases of *Grainger* v. *Gough* (1896) 60 J.P. 692 and *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists (Southern) Ltd.* [1953] 1 All E.R. 482; 116 J.P. 132, are relevant. A.J.H.

Answer.

We regard this as an invitation to make an offer, not an offer which can be converted by acceptance into a contract: *see* remarks of Bowen, L.J., about advertisement of goods for sale, in *Carlill's* case, *supra*, and of Parke, B., in *Timothy* v. *Simpson* (1834) 6 C. & P. 499.

3.—Land—*Statutory purpose stated in conveyance to council—Appropriation.*

When the borough council acquired certain land for statutory purposes in 1934 the deed of conveyance recited

1. That the council had authority under the Public Health Act, 1925, s. 69, to acquire land for the purposes of playing fields and open spaces; and

2. That the property thereby assured was required by the council for the purposes authorized by the said section.

The habendum was in the following form, *viz.*, "To hold the same unto the council in fee simple for the purpose or purposes of a children's playing field and for no other purpose whatsoever," but the conveyance contained no covenant of any kind by the council.

The council now wish to sell the land or appropriate it for other municipal purposes, and the question arises whether they are entitled to do so.

Your opinion on the following points would be appreciated.

Does the conveyance create an implied covenant by the council in the terms of the habendum, and, if so, is such covenant enforceable by the vendor or his successors in title? BEXOR.

Answer.

The vendor has not taken the precaution of protecting himself by a covenant from the purchaser. In our opinion the answer to both questions is that the conveyance does not preclude sale with the proper consent, or an appropriation in accordance with s. 163 of the Local Government Act, 1933.

4.—Magistrates—*Practice and procedure—Witnesses for prosecution excluded from court until called to give evidence—Many defendants tried together not so excluded.*

From time to time we have here prosecutions against licensees and clubs under the Licensing and Betting Acts. A few days ago we had one against a licensee for supplying liquor outside the permitted hours and for allowing betting and gaming to be carried on upon his premises, etc., and with him there were about a dozen other defendants, charged with a variety of matters all arising from the same facts. As soon as the pleas were taken and it was discovered that all the defendants were pleading "not guilty" all the prosecution witnesses left the court. In this particular case there were no witnesses for the defence, apart from the defendants themselves. The case proceeded in the normal way—the officers came into court one by one and were subjected to a most rigorous cross-examination and the most was made of any little inconsistency and at last the case for the prosecution ended and the defence opened. This, in my view, seemed a complete farce. Each of the defendants went into the box: each told precisely the same story, with the result that the prosecuting solicitor got very little from each of them by way of cross-examination.

In fairness to the prosecution, I wondered whether such a case could be dealt with in this way: assuming, for the moment, that the case for the prosecution has been concluded, it is then open to each defendant to put his evidence forward. Could not the defendants remain out of court until their individual turn arrived to go into the witness box and put forward their defence? Cross-examination might then show many inconsistencies such as were discovered by the defence in the prosecution's case.

We have had quite a number of these cases lately where there have been as many as 12 or 18 defendants represented by as many as five or six solicitors and you can imagine the hey-day they have in dealing with the prosecution's witnesses, usually police officers, who are out of court whilst evidence is being given. It does not seem fair to me, for usually all the defendants sit listening to what is being said by their confederates and when their turn comes they go into the witness box and tell the same story. The result is that out of the last four or five prosecutions, the prosecution has lost three.

I wondered whether this point had ever been put to you before and if you had considered it. ODFOR.

Answer.

There is nothing unusual in the situation as outlined by our correspondent: it is unavoidable where cases against a number of offenders are heard together.

We think that we should not criticize the magistrates' court on the basis of the statement that " out of the last four or five prosecutions, the prosecution has lost three " ; but, in a general way, we venture to repeat the dictum that it is the court's business to weigh witnesses not to count them.

5.—Merchandise Marks—*Institution of proceedings under the Merchandise Marks Act*, 1887.

The borough of X is a weights and measures authority. It is desired to institute proceedings under s. 2 (*d*) of the Merchandise Marks Act, 1887. I have been unable to trace any express statutory provision authorizing the council to institute legal proceedings.

Am I correct in assuming that the information may be laid by the town clerk on the authority of a resolution of the council (*Cole* v. *Coulton* (1860) 24 J.P. 596) ?

GERAF.

Answer.

The council can institute proceedings by virtue of s. 276 of the Local Government Act, 1933, and s. 277 of the Act empowers the council to authorize by resolution any member or officer, generally or in respect of any particular matter, to institute proceedings before a magistrates' court. (*See* the notes in *Bell*, 13th edn. at pp. 553 and 178.)

6.—Private Street Works—*New Streets Act*, 1951—*Reduction of security.*

With regard to the second sentence of your answer to P.P. 8 at p. 521, *ante*, have you considered s. 6 (2) of the New Streets Act, 1951 (Amendment) Act, 1957, which came into effect on September 6 ?

PADOMA.

Answer.

We were advising on the law as it was. We agree that the action advised by the Minister is lawful now that the Act of 1957 has come into force.

7.—Public Health Act, 1936—*Owner—Whether definition is exclusive.*

Section 2 of the Public Health (Ireland) Act, 1878 (which is still largely in operation in Northern Ireland) defines the word " owner " specifically as " meaning the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such land or premises were let at a rackrent." This definition is the same as in the Public Health Act, 1875 ; the Public Health (London) Act, 1891, and, so far as is relevant for the present query, s. 343 (1) of the Public Health Act, 1936. Here in Ulster I am being asked to issue summonses on behalf of the sanitary authority in appropriate cases, not against this " statutory owner " if he might be so described, but rather against the " real owner." This is because the estate agents receiving the rents are all too often out of pocket, and they are beginning to object to being saddled with a big liability for repairs, particularly when they have small hope of recovering it from impecunious clients. The definition looks absolute at first glance, as excluding any possibility of summoning the real owner but, in the present situation, I have tried to find some authority which would give the sanitary authority an option of summoning either the agent or the true owner. So far my investigations have disclosed notes in leading textbooks, to the effect that the liability of agents does not prevent recourse to those who, as being entitled to receive the rackrent, are also owners within the definition: *Lyon* v. *Greenhow* (1892) 8 T.L.R. 457 ; *Watts* v. *Battersea Corporation* (1929) 63 J.P. 137. I have not been able to discover any further cases which support the proposition I am seeking to establish.

B.C.B.C.

Answer.

There is little guidance in decided cases, because these all arose from the local authority's having proceeded against the agent. We doubt whether the decisions mentioned in the query support the proposition that proceedings can be taken against the principal, except where the agent is a mere conduit pipe. (One of the Judges used the analogy of a school boy sent to collect rent from his father's tenants: *cp. Bottomley* v. *Harrison* [1952] 1 All E.R. 368 ; 116 J.P. 113.) The verb in the definition is " means," not " includes," which one would expect if Parliament had intended to give the local authority an option. The second limb of the definition brings in the true owner where the premises are not let at a rackrent ; this is not the ordinary case. The hardship on the agent is recognized by s. 294 of the Public Health Act, 1936, which was new legislation. There is no similar provision in the Irish Act, and s. 294 seems to assume that the primary remedy is against the agent.

8.—Road Traffic Acts—*Insurance—Policy covering " auto-cycles " —Application to a " motor bicycle."*

The police in this county borough have summoned a person for driving a 500 *c.c.* motor bicycle on a road whilst uninsured. The defendant is the holder of a certificate of insurance which covers him whilst riding his own auto-cycle or any other auto-cycle, whereas the motor bicycle, which is not his, is only covered for third-party risks. I should appreciate your opinion as to whether the defendant's insurance extends to riding motor bicycles and also the definitions of a " motor bicycle " and " auto-cycle."

KEWSO.

Answer.

We know of no statutory definition of the expression " auto-cycle." Without seeing the policy in question we hesitate to give a positive opinion. We think, however, that it is probably meant to cover the riding of a vehicle which, while it can be mechanically propelled, can also be used as a pedal cycle and to exclude the riding of vehicles which cannot be used except as motor bicycles.

9.—Small Dwellings Acquisition Acts, 1899 and 1923—*Transfer of mortgage—Consent.*

I assume that the mortgage concerned in P.P. 15 at p. 238, *ante*, was effected under the Small Dwellings Acquisition Acts. By virtue of s. 3 (2) of the Act of 1899 the original borrower has the right to sell the house subject to the existing mortgage. The subsection states that the right of the proprietor of the house to transfer his interest at any time may be exercised with permission of the local authority, which shall not be unreasonably withheld. Do you consider that the council can reasonably withhold consent to the transfer of their existing mortgage, solely on the ground that they could re-lend the money at a higher rate of interest ?

PUCOLFO.

Answer.

We can see nothing unreasonable in a lender's taking steps to obtain the current rate of interest.